

OPINION NO. 93-024**Syllabus:**

1. Any purchase of work-related travel, food, or lodging by credit card pursuant to R.C. 301.27 is subject to the competitive bidding requirements of R.C. 307.86 if the cost of the purchase exceeds ten thousand dollars.
2. An officer or employee who is authorized to use a credit card may incur debt against the county's credit up to the amount authorized by the board of county commissioners pursuant to R.C. 301.27.
3. A county must comply with the competitive bidding requirements of R.C. 307.86-.92 in the purchase of gasoline and oil for county vehicles.
4. A "purchase" of gasoline or oil, or both, is made each time a credit card is presented in lieu of money to obtain a quantity of gasoline or oil, or both.

To: John F. Holcomb, Butler County Prosecuting Attorney, Hamilton, Ohio
By: Lee Fisher, Attorney General, October 27, 1993

You have requested an opinion on the following matters:

1. Is the purchase of work-related travel, food and lodging expenses purchased outside of the State of Ohio by a credit card pursuant to O.R.C. Sec. 301.27 an exception to O.R.C. Sec. 307.86, the competitive bidding statute?
2. Is the purchase of work-related travel, food and lodging expenses purchased within the State of Ohio but outside the home county by a credit card pursuant to O.R.C. 301.27 an exception to O.R.C. Sec. 307.86, the competitive bidding statute?
3. Is the purchase of work-related travel, food and lodging expenses purchased within the home county by a credit card pursuant to O.R.C. Sec. 301.27 an exception to O.R.C. Sec. 307.86, the competitive bidding statute?
4. May county employees while in the scope of their employment purchase gas and oil for a county vehicle from a service station located within the home county by using a credit card pursuant to O.R.C. Sec. 301.27 when the total cost of gasoline and oil per year exceeds \$10,000?
5. Does the county have to obtain gasoline and oil purchased by credit cards pursuant to O.R.C. Sec. 301.27 for county vehicles operating within the home county through competitive bidding of the service stations within the home county when the total cost of gasoline and oil per year exceeds \$10,000?

Background

R.C. 301.27(A) permits a board of county commissioners, upon application from a county appointing authority, to "authorize an officer or employee of the appointing authority to use a credit card held by the board or the appointing authority to pay work-related travel, food, and lodging expenses." R.C. 301.27(B) further states that, "[e]very officer or employee

authorized to use a credit card held by the board or appointing authority shall submit to the board by the first day of each month an estimate of his work-related travel, food, and lodging expenses for that month." Thereafter, the board "may revise the estimate and may authorize the officer or employee to incur debt for such expenses against the county's credit up to the estimated amount." *Id.*

R.C. 307.86 reads, in relevant part, as follows:

Anything to be purchased...including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ten thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 307.022, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding.

See R.C. 307.92 (as used in R.C. 307.86-.91, inclusive, "contracting authority" means "any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof"). Further exceptions to the requirement of competitive bidding are provided by divisions (A) through (H) of R.C. 307.86. *See also* 1979 Op. Att'y Gen. No. 79-034 (the competitive bidding requirements of R.C. 307.86 are not applicable to the purchase of real estate); 1992 Op. Att'y Gen. No. 92-060. None of these exceptions, however, are for purchases made by credit card pursuant to R.C. 301.27. Thus, the fact that payment for a purchase is made by credit card pursuant to R.C. 301.27 does not except the purchase from the competitive bidding requirements of R.C. 307.86.

A Purchase Is Not Excepted From the Competitive Bidding Requirements of R.C. 307.86 Merely Because It Is Accomplished By Use of A Credit Card Pursuant to R.C. 301.27

A. R.C. 301.27 and R.C. 307.86 May Both Be Applicable to the Same Purchase

There is nothing inconsistent in the application of both R.C. 301.27 and R.C. 307.86 to a single purchase. R.C. 307.86 requires that any purchase by or on behalf of the county or contracting authority at a cost exceeding ten thousand dollars, unless expressly excepted, be obtained through competitive bidding. R.C. 307.86 does not specify the manner in which payment is to be made for the purchase. On the other hand, R.C. 301.27 expressly permits a credit card to be used for the payment of work-related travel, food, and lodging expenses. If the cost of a single purchase of travel, food or lodging exceeds ten thousand dollars and does not fall within one of the exceptions to R.C. 307.86, it must be competitively bid, regardless of the method of payment.

B. Location of Purchase Does Not Affect the Applicability of R.C. 301.27 and R.C. 307.86

Your first, second, and third questions ask whether work-related travel, food, and lodging purchased with a credit card pursuant to R.C. 301.27 outside of the State of Ohio, within the

State of Ohio but outside of the county, and within the county, respectively, are excepted from the competitive bidding requirements of R.C. 307.86. Because R.C. 307.86 does not except purchases made by credit card pursuant to R.C. 301.27 from the requirements of competitive bidding, and R.C. 307.86 makes no distinction between purchases made within the State of Ohio and purchases made outside of the state, or purchases made within the county and those made in another county, any such purchase of work-related travel, food or lodging is subject to the competitive bidding requirements of R.C. 307.86 if its cost exceeds ten thousand dollars.

R.C. 301.27 Permits an Officer or an Employee Who is Authorized to Use a Credit Card to Incur Debt Against the County's Credit up to the Amount Authorized by the Board of County Commissioners

Your fourth question asks whether county employees may purchase gas and oil for a county vehicle from a service station located within the county by using a credit card pursuant to R.C. 301.27 when the total cost of gasoline and oil exceeds ten thousand dollars per year. A member of your staff has explained that the county employees would use the credit cards to pay for gasoline and oil as needed for the individual county vehicles. The cost of filling the gas tank and replacing the oil of an individual vehicle will, of course, never exceed ten thousand dollars on any single occasion, although the cost of gasoline and oil for all county vehicles can be expected to exceed ten thousand dollars per year.

Although R.C. 301.27 permits the officer or employee using a credit card to incur debt for travel, food, and lodging expenses only up to the amount of money authorized by the board of county commissioners, it specifies no dollar limit on the amount of money the board may authorize to be charged to the credit card. Thus, the mere fact that the total cost of gasoline and oil for county vehicles will exceed ten thousand dollars in one year does not mean that a credit card may not be used pursuant to R.C. 301.27 to pay for the gasoline and oil, so long as the board of county commissioners, acting pursuant to R.C. 301.27(B), has authorized credit card purchases in excess of ten thousand dollars.

The Ten Thousand Dollar Threshold of R.C. 307.86 for the Application of Competitive Bidding Applies to Individual Purchases Rather Than an Aggregate of Purchases

Your fifth question asks whether a county must obtain gasoline and oil purchased by credit card pursuant to R.C. 301.27 for county vehicles operating within the county through competitive bidding of the service stations within the county when the total annual cost of gasoline and oil exceeds ten thousand dollars. The requirement of competitive bidding pursuant to R.C. 307.86 is triggered when the cost of a purchase by or on behalf of the county or contracting authority, as defined by R.C. 307.92, exceeds ten thousand dollars. The ten thousand dollar threshold is applied to each individual purchase, not to an aggregate of purchases. *Cf.* R.C. 127.16 (requiring competitive bidding by state agencies based upon a calculation of aggregate amounts). *See* 1992 Op. Att'y Gen. No. 92-050; 1991 Op. Att'y Gen. No. 91-051. In 1980 Op. Att'y Gen. No. 80-038, it was determined that

the threshold limitation provided in [R.C. 307.86] should be interpreted as relating separately to any purchase or lease which may reasonably and in good faith be deemed to constitute a separate contract or purchase order. The purchase or lease contemplated may not be split into separate contracts or orders for the purpose of evading the requirements of the statute.

Id. at 2-162. See also *State ex rel. Kuhn v. Smith*, 25 Ohio Op. 2d 203, 194 N.E.2d 186 (C.P. Monroe County 1963) (school repairs may not be done piecemeal to avoid competitive bidding); *State ex rel. Ashland County v. Snyder*, 2 Ohio N.P. (n.s.) 261 (C.P. Ashland County 1904) (competitive bidding requirements cannot be evaded by elimination of work that would normally be included in a bridge contract); *Wing v. City of Cleveland*, 9 Ohio Dec. Reprint 551 (C.P. Cuyahoga County 1885) (competitive bidding may not be avoided by the purchase of separate orders of less than the threshold amount). Thus, if it is reasonable to purchase gasoline and oil for county vehicles as needed for each vehicle, and each such purchase costs less than ten thousand dollars, competitive bidding is not required. However, a single purchase of gasoline and oil exceeding ten thousand dollars may not be split into several small orders for the purpose of avoiding competitive bidding.

A question arises as to what constitutes a "purchase" when a credit card is used on a number of occasions, over a period of time, to obtain gasoline and oil from a single supplier. "Purchase" is not defined for purposes of R.C. 307.86, and therefore must be understood in its natural, literal, common, or plain sense. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). The dictionary defines "purchase" as "[t]o obtain in exchange for money or its equivalent; buy." *The American Heritage Dictionary* 1005 (2d college ed. 1985). A credit card is presented, at the time the item or items are obtained, in lieu of an actual payment in money. A bill is usually presented to the holder of a credit card by the issuer of the credit card. The bill represents payment due for all of the items obtained over a period of time, e.g., one month. A credit card is not money, although it "signifies that the legal owner thereof is a good credit risk and the issuer [of the credit card] guarantees payment for goods, wares and merchandise sold and delivered on the basis of the card." *Williams v. U.S.*, 192 F.Supp. 97, 100 (S.D. Cal. 1961). Generally, "the holder of a credit card presents it to the merchant and, upon the strength of the credit card, a charge slip is made out and signed by the purchaser. The original charge slip is then sent to the proper place for redemption and is paid by the issuer of the credit card. This may be either before or after the holder of the credit card is billed for the merchandise sold to him when he presented his credit card." *Id.* In this way, a credit card is the equivalent of money, since it is the medium of exchange by which an item is obtained, even though payment in actual money is made at a later time. Each time the credit card is presented in order to obtain an item or items, a purchase is made. Therefore, even though the total cost of all gasoline and oil obtained at a single service station exceeds ten thousand dollars over a period of time, competitive bidding is not required when each charge made upon presentation of the credit card to the seller of gasoline and oil is less than ten thousand dollars.

Conclusion

It is, therefore, my opinion, and you are hereby advised, that:

1. Any purchase of work-related travel, food, or lodging by credit card pursuant to R.C. 301.27 is subject to the competitive bidding requirements of R.C. 307.86 if the cost of the purchase exceeds ten thousand dollars.
2. An officer or employee who is authorized to use a credit card may incur debt against the county's credit up to the amount authorized by the board of county commissioners pursuant to R.C. 301.27.
3. A county must comply with the competitive bidding requirements of R.C. 307.86-.92 in the purchase of gasoline and oil for county vehicles.

4. A "purchase" of gasoline or oil, or both, is made each time a credit card is presented in lieu of money to obtain a quantity of gasoline or oil, or both.